Manimark Corporation *and* Hurley Fields. Case 7–CA–31409

June 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On October 10, 1991, Administrative Law Judge Claude R. Wolfe issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief, cross-exceptions, and a supporting brief. The Respondent also filed an answering brief to the cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

On January 14, 1991,[1] the Respondent discharged its route driver, Hurley Fields, for ''disruptive behavior'' and his ''negative attitude towards criticism of that behavior.'' Applying the principles of *Meyers I* and *II*[2] and *Wright Line*,[3] the judge found that the discharge violated Section 8(a)(1) of the Act. In its exceptions, the Respondent contends that the discharge was not predicated on known concerted activity and that it would have taken the same action against Fields in the absence of any protected concerted activity on his part. We adopt the judge's finding of a violation. Contrary to the Respondent, the credited evidence, as discussed by the judge and further highlighted below, shows that the General Counsel made the requisite prima facie showing that Fields' discharge was motivated by unlawful considerations[4] and that the Respondent did not meet its burden under *Wright Line.*

The Respondent admits that Fields' discharge was based, in part, on his January 4 and 11 encounters with Gary Morris, the general manager, and Robin Merkel, an office employee. Yet, on both occasions, Fields was airing complaints about working conditions previously discussed with and shared by other drivers, and Morris had reason to believe that Fields was not acting alone on either day. In particular, we observe that in the discharge letter Morris noted that on January 4 Fields told Morris he had complaints ''as did another driver'' and during that encounter Morris himself suggested a group meeting to further discuss the drivers' complaints.[5] Additionally, at least one other driver, David Morrow, actively participated in the January 11 protest about company policy which Merkel fully reported to Morris. Under these circumstances, the General Counsel has presented a prima facie case under *Wright Line.*

Even though Morris testified that the protest to Merkel on Friday, January 11, actually triggered Fields' discharge on the following Monday, the Respondent contends that Fields' habit of making disparaging remarks about his coworkers, his response to prior criticism about his machines' cleanliness, and his routine practice of mishandling dated warehouse products warranted his discharge in any event. Like the judge, we find that the Respondent in asserting these additional grounds was ''stretching for an excuse rather than a reason to discharge Fields'' and that these grounds were ''pure makeweights.'' In particular, we note that the record shows that the Respondent had tolerated Fields' blunt and outspoken manner throughout his 2-year tenure with the Company and that he was considered a good worker. In addition, the Respondent let stand undisciplined similar conduct in the workplace, including an offensive remark about a female employee made by a supervisor and overheard by another female employee. Accordingly, we find that the Respondent's exceptions lack merit and, in agreement with the judge, that the Respondent did not meet its *Wright Line* burden.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Manimark Corporation, Belleville, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] All dates are in 1991 unless otherwise indicated.

[2] *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), and *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986).

[3] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The test stated in this case was approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[4] We, however, do not rely on the judge's findings that the Respondent's January 14 discharge memo itself constitutes an admission of an unfair labor practice.

[5] This group meeting never occurred and the discharge letter notes that Fields failed to schedule it. On January 11, Fields was asked about scheduling the meeting and he told Morris that he did not have the time. We adopt the judge's finding that Fields' statement was protected under Sec. 7. See *Kinder-Care Learning Centers*, 299 NLRB 1171, 1172 (1990).

Ellen B. Rosenthal, Esq., for the General Counsel.
J. Michael Guenther, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge. This proceeding was litigated before me at Detroit, Michigan, on June 10, 1991, pursuant to charges filed by Hurley Fields on January 17, 1991, and served on January 18, 1991, and complaint issued February 21, 1991, alleging Respondent vio-

lated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by discharging Hurley Fields.

Upon the entire record, and after considering the demeanor of the witnesses as they testified before me and the posttrial briefs filed by the parties, I make the following

FINDINGS OF FACT

I. BUSINESS OF THE RESPONDENT

Respondent is a Michigan corporation with its principal office and place of business in Belleville, Michigan, where it is, and has been at times material to this proceeding, engaged in the serving of food vending machines and the contract food service industry. During the calendar year ending December 31, 1990, a period representative of its operations during all times material hereto, Respondent purchased and caused to be transported and delivered to its Belleville place of business, food, soft drinks, and other vending machine supplies valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its place of business in Belleville, Michigan, directly from points located outside the State of Michigan. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), (7) of the Act.

II. LABOR ORGANIZATION

Local 51, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. SUPERVISORS AND AGENTS

The complaint alleges, Respondent admits, and I find that at all times material to this proceeding the following named persons occupied the positions set opposite their respective names, and have been and are now supervisors of the Respondent, within the meaning of Section 2(11) of the Act, and its agents:

Ralph Neil Krochmal	President and Owner
Gary Lee Morris	General Manager
Randy Smith	Supervisor
Michael G. Bailey	Supervisor

The complaint also alleges Robert Ebert is the warehouse manager with similar supervisory and agency status. This the Respondent denies. This issue is dealt with in the discussion of the alleged unfair labor practice.

IV. THE ALLEGED UNFAIR LABOR PRACTICE

Hurley Fields was a route driver servicing vending machines at the metropolitan airport for about 2 years prior to his discharge on January 14, 1991. He had begun his employment with Respondent on September 26, 1988.

When Fields returned from servicing his route on the morning of January 14,[1] he was called into the office where Gary Morris, Respondent's vice president and general manager, in the presence of Supervisors Randy Smith and Jeff Main, handed Fields the following document, and read it to Fields at Fields' request:

> To: Hurley Fields
>
> Re: Termination of employment, effective 1–14–91
>
> Written By: Gary Morris, General Manager
>
> As of the above date your employment with Manimark Corporation is terminated because of your disruptive behavior and your negative attitude towards criticism of that behavior. Because of this negative attitude and past violent reactions to discussions of same it is felt there is no way to improve your nature and your continued employment would only detract from the positive direction Manimark wishes to take. Listed below are some of your actions that influenced my decision.
>
> —Friday 1–4–91 we met in my office and you said you had some complaints as did another driver you knew of. I told you I would try to work out anything, and asked you to set aside some time for you and anyone else to discuss them over breakfast, lunch, dinner, or whenever available. Friday 1–11–91 I asked you when we were going to schedule a meeting and you said you didn't have the time. I assumed you had no interest in working out problems.
>
> —Friday 1–11–91 you challenged Robin Merkel about the payment for unused sick days. This payment is made the same time every year and Robin does not set policy. Regardless, you chose to let her know, in front of everyone in the warehouse, your disagreement with the policy. You did this before asking anyone with the authority to set policies.
>
> —Your degrading remarks about other employees to anyone who will listen. In a conversation with me you referred to John Roberts, our cleaning person, as ''the drunk you've got cleaning the floors.'' You asked Randy Smith why the ''butt brothers'' got the new trucks, refering to David Cheetam and Tony Cecale. You have told me and others that the supervisors are worthless and that Mike Bailey has favorites who get everything. You have never chosen to work out any problems with these people but instead make wise cracks and vicious slurs about them.
>
> —When I heard that your machines were getting dirty, more so than normal, I asked you to take some extra time to clean them up. I did not give you a written or verbal warning, it was a comment as a result of an inspection. Your reaction was rage. You said it was not possible and how could I accuse you of that. All I wanted was to make sure the machines were clean, you could not accept these comments. You even gave the mechanic who passed the information on to me a hard time about it.
>
> —Manimark Corporation is in the service business and must have everyone working as a team. You are only interested in yourself. An example of this is your warehouse behavior. You refuse to take dated product (milk and pastry) that is already in the warehouse but wait for the new deliveries. You know that the oldest product must be used first but because you have bullied the warehouse personnel, no one stops you. This hap-

[1] All dates are 1991 unless otherwise indicated.

> pens not only to Bob Eberts but you did the same thing to Robin Merkel when she filled in for Bob.
>
> Your termination may seem like drastic action to you, but I am spending too much time dealing with the aftermath of your presence. Your disruptive behavior is a detriment to the company, thus the necessity to end your employment with Manimark Corporation.

The General Counsel argues that the real reasons for Fields' discharge were his union activity and other protected concerted activity, Fields' union activity was certainly not outstanding, consisting of some rather vague conversations with other employees concerning the desirability of union representation and the receipt of a union telephone number from another employee, which he never called. There is no evidence Respondent knew of this limited union-related conduct by Field.

Contrary to the General Counsel, who adduced evidence that Robert Ebert knew of Fields' union leanings, Robert Ebert is not a statutory supervisor nor has he been shown to be an agent for anything other than ''managing'' the warehouse, which ''managing'' is limited to monitoring what goes in and out of the warehouse and ordering merchandise from suppliers who have negotiated agreements with Ebert's superiors to replace stock taken by the drivers to service their customers. Ebert supervises no one, wears the same uniform as the drivers, is paid less than the drivers, and is directly supervised by the same person who directly supervises drivers. His job is essentially that of a stock clerk who routinely checks to see that the supplies withdrawn from stock by the drivers are consistent with the items listed on the requisition sheets the drivers present. He also reminds drivers of Respondent's established rule that they should not pass over older dated merchandise to take newer from the shelves, and reports to his superiors those occasions when drivers do not adhere to the policy concerning using the older merchandise first. This reporting has not been shown to be an effective recommendation requiring any use of independent judgment. There is no independent discretion involved when Ebert orders replacement merchandise. He merely calls the established supplier and orders supplies sufficient to maintain an established inventory level. There is no evidence he has any independent authority to change that level which is determined by the sales volume and his superiors. Replacing a removed item with another is hardly the type of decision demonstrating the use of independent judgment. There is no persuasive evidence that he meets any of the criteria set forth in Section 2(11) of the Act[2] to establish supervisory status. The burden of proof is on the party alleging supervisory status,[3] here the General Counsel. That burden had not been met. Similarly, the General Counsel has not shown Ebert is an express, apparent, general or even special agent of Respondent for any purpose other than the performance of his warehouse duties, which cannot be stretched far enough to encompass a duty to report information concerning union leanings. The General Counsel has not adduced evidence sufficient to support a showing Fields could reasonably believe Ebert was speaking for management,[4] and the evidence reveals no sound reason to impute Ebert's knowledge to Respondent. Accordingly, I conclude knowledge of Fields' exploratory foray into the general area of union activity, described below, cannot be imputed to Respondent from Ebert's remarks to Fields around the first of the year to the effect Ebert had heard about the Union and Fields should be careful because he would be terminated if Respondent found out about it as had happened to ''Joe'' whom Fields took to be Joseph Butner who the Board has found was discharged in 1988 because he was a union supporter.[5] Moreover, there is no other evidence, direct or circumstantial, that Respondent was aware of Fields' very limited union-related conduct which consisted of only a few desultory conversations involving him and other employees concerning the desirability of a union, and his receipt of a union telephone number, which he never used, from another employee who voluntarily offered it to Fields.

Whether Fields' discharge was in response to protected concerted activity is a more difficult issue. The answer to that question is found in an examination of the discharge notice and the testimony of Fields and Morris, and others to the extent relevant, and application of the controlling precedent set forth in *Meyers I and II*[6] and their relevant progeny. *Meyers I*, supra at 887, sets the following guidelines:

> In general, to find an employee's activity to be ''concerted,'' we shall require that it be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself. Once the activity is found to be concerted, an 8(a)(1) violation will be found if, in addition, the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the adverse employment action at issue (e.g., discharge) was motivated by the employee's protected concerted activity.

Meyers II, supra at 887, further explains:

> We reiterate, our definition of concerted activity in *Meyers I* encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management.

The January 4 meeting referred to in the discharge notice was convened by Morris to advise Fields that his method of compensation was being changed. Fields objected to the change, and went on to tell Morris that he and other drivers were unhappy with the truck maintenance, the poor communications between supervisors and drivers, and the consist-

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[2] Sec. 2(11) provides:

> The term ''supervisor'' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

[3] See, e.g., *Staco, Inc.*, 244 NLRB 461 (1979).

[4] See *House Calls, Inc.*, 304 NLRB 311 (1991).

[5] *Manimark Corp.*, 301 NLRB 599 (1991).

[6] *Meyers Industries (Meyers I)*, 268 NLRB 93 (1984), and *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986).

ently late arrival of the Hostess driver who daily supplied the Manimark drivers with Hostess products which delayed Respondent's drivers from loading their trucks and going home and resulted in them standing around and not getting paid for time spent. Fields is credited that conversations among drivers did result in these common complaints. Morris suggested that Fields get a group of the drivers together to discuss their complaints at a mutually convenient time.

When Fields returned from servicing his route on the morning of January 11, Morris approached him and asked if Fields had followed up on Morris' suggestion to form a group and meet with Morris. Fields replied that he had not had time to so do. Morris left Fields without further comment.

The witnesses do not agree on the date of the Merkel incident. The date is not crucial, but I conclude it probably took place on January 11 as Morris testified because Merkel places it a couple of days before Fields' January 14 discharge and Fields placed it on January 11 in a pretrial statement given to the Board on January 22, just 11 days later. According to Fields, he, Robert Ebert, and David Morrow were talking when he wondered when they would be paid for unused sick days. At that point, Robin Merkel, an office employee, entered the warehouse, causing Fields to say, ''Well, here's our answer now,'' and pose the question to her as to when they would receive the sick day pay. She replied that would happen when Respondent's owner approved it. Fields testified that he then said, ''Well, that means if we have to take a sick day now and we have an unused sick day from the previous year can we use it now?'' to which rather convoluted statement/question Merkel said, ''No.'' Fields says he then opined, ''Well, I think we should have been paid for our sick days at the first of the year.'' He recalls nothing else being said.

Morrow recalls that Fields had just asked him when they would get the pay for unused sick days when Robin Merkel came up. He states that Fields asked her when they would get it, and she said she wasn't sure and would find out and let him know. That is the extent of his recollection.

Robin Merkel testified that she believes Morrow said, as she arrived on the scene, she might be able to explain how sick time is paid. She recalls saying it was computed in January, and paid the first part of February or whenever they decide to pay for it. To which Fields commented they should then still be able to use last year's sick time. Merkel says she then said they could not because the cutoff date was December and the computation in January or February, with which explanation Fields disagreed. She replied to this that she did not make the policies and if he had a problem he could talk to Morris or Krochmal, Respondent's president and owner, because they were the ones that decide when the sick days were paid. Fields said he might have to do that. She reported this conversation to the office manager who reported it to Morris who called Merkel in and got her version of what happened.

By anyone's version, I do not detect any verbal abuse of Merkel, or anything intimidating. She was asked, and gave her answer. There is no great difference between the versions. Merkel's version is simply more complete and is credited because it had the ring-of-truth and she was a forthright and believable witness with no apparent axe to grind. Although the discharge memorandum alludes to degrading remarks about other employees, Fields' attitude when asked to clean his vending machines, and Fields' alleged habit of taking the newer rather than the older merchandise from the warehouse, Morris states it was this ''confrontation'' between Fields and Merkel that finally decided him to discharge Fields.

The evidence supports a finding, which I make, that the General Counsel has made out a prima facie case the discharge of Fields violated Section 8(a)(1) of the Act. As heretofore noted, Meyers II specifically included ''individual employees bringing truly group complaints to the attention of management'' within the definition of concerted activity. Truck maintenance, poor communications between supervisors and employees, and the tardy arrival of the Hostess drivers have all been shown to be matters of concern to Fields and his fellow drivers. When Fields raised these matters to Morris he was bringing group complaints to the attention of management. That Morris believed these were matters of concern to other employees as well as Fields is shown by the reference in the January 14 discharge notice to complaints harbored by Fields and another driver, and by Fields' credible testimony that Morris asked him to form a group of drivers to discuss their complaints. There would be no reason for such a request if Morris believed that Fields was merely stating his own views rather than views held in common by him and other drivers. Moreover, Morris' request that employees come together in a group to present their work- related problems amounts to recognition and solicitation of protected concerted activity. As the discharge memo shows in its recitation of January 4 and 11 events, Morris relied on Fields' conduct on those dates concerning the expression of employee problems and his failure to assemble complaining employees to meet with Morris as motivating factors in his decision to discharge. With respect to the first item, Morris, on behalf of Respondent, used Fields' presentation of work-related complaints, which Morris believed were the result of group action as a basis for discharge. This is sufficient to prima facie establish a violation of Section 8(a)(1) of the Act.[7]

The General Counsel has made out a prima facie case that a belief there was protected concerted activity by Fields was a motivating factor in Respondent's decision to discharge Fields. The burden therefore rests on Respondent to prove Fields would have been discharged in the absence of protected activity.[8] Respondent has not carried that burden. Reliance on the January 4 meeting where Fields brought group complaints to Morris is an admission that a motivating factor in the decision to discharge was his concerted activity. Similarly, Respondent's use of Fields' failure to schedule a group meeting with other employees to discuss work-related problems as a reason for discharge renders the discharge unlawful because the reason is unlawful. Fields had a Section 7 right to refrain from engaging in such concerted activity. By raising this matter as a defense Respondent has therefore admitted an unfair labor practice.[9]

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[7] *American Poly-Therm Co.*, 298 NLRB 1057 (1990); *Monarch Water Systems*, 271 NLRB 558 (1984).

[8] *Wright Line*, 251 NLRB 1083 (1980); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[9] See *Hale Container Line, Inc.*, 291 NLRB 1195, 1205 (1988), for Judge Roth's disposition of a similar issue.

With respect to the Merkel incident, it was nothing more than a brief conversation among employees which seems not to have particularly troubled Merkel. There is nothing in the testimony of the participants that suggests anything in the nature of an unreasonable confrontation, and it is difficult to understand why such a meeting was considered sufficient by Morris to trigger a discharge. I am inclined to believe that here Morris was stretching for an excuse rather than a reason to discharge Fields. The same is true I believe of the reference to the ''degrading remarks'' made by Fields, which, standing alone, would not seem to constitute grounds for discharge given the evidence that at least one supervisor delighted in disparaging remarks about an employee. Likewise, the raising of a several months old incident concerning the cleanliness of Fields' vending machine at that time with no showing of such a situation since, and the unverified allegation of Fields' refusal to take dated product are pure makeweights. In addition to the admissions indicating a violation of the Act in the January 14 memo, the failure of the other reasons advanced, surrounded by conclusory remarks with no evidentiary value, warrants an inference of unlawful motivation.[10] Respondent has failed to prove by a preponderance of the evidence that Fields would have been discharged in the absence of suspected or actual protected concerted activity and the failure of Respondent's reasons advanced for the discharge serves to strengthen the General Counsel's case. The General Counsel has proved by a preponderance of the evidence that Fields' discharge violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent violated Section 8(a)(1) of the Act by discharging Hurley Fields because Respondent believed he engaged in protected concerted activity, and because Fields failed to engage in other protected concerted activity as requested by Respondent.

3. The unfair labor practice found affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

In addition to the usual notice posting and cease and desist requirements, my recommended order will require Respondent to offer Hurley Fields immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority, or other rights and privileges previously enjoyed, and make him whole for any loss of earnings suffered as a result of the discrimination against him. Backpay shall be calculated and interest thereon computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[11] I shall further recommend that Respondent be required to remove from its files any reference to the discharge, and notify him in writing that this has been done and that the discharges will not be used against him in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Manimark Corporation, Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engage in protected concerted activity or refrain from such activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Hurley Fields immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the discharge of Hurley Fields, and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[10] *Elion Concrete, Inc*., 299 NLRB 1 (1990); citing *Shattuck Denn Mining Corp*., 362 F.2d 466, 470 (9th Cir. 1966).

[11] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any employees because they engage in protected concerted activity or refrain from such activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Hurley Fields immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the discharge of Hurley Fields, and notify him in writing that this has been done and that the discharge will not be used against him in any way.

MANIMARK CORPORATION